

Staten Island University Hospital and Federation of Nurses/UFT, American Federation of Teachers, AFL-CIO. Case 29-CA-18766

March 15, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge filed December 14, 1994, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain.¹ The General Counsel issued a complaint and notice of hearing in Case 29-CA-18766. On March 10, 1995, the Respondent filed an answer to the complaint admitting in part and denying in part the allegations in the complaint. On March 14, 1995, the New York State Nurses Association (NYSNA) filed an answer to the complaint admitting in part and denying in part the allegations in the complaint.

On August 21, 1995, the General Counsel filed a Motion for Summary Judgment. On August 23, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response. The NYSNA also filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent argues that the Board's unit determination in the underlying representation proceeding was erroneous and that the placement of the alcohol detoxification unit nurses and the registered nurses in its staff development department should be decided in a unit clarification hearing.² The NYSNA filed an answer to the complaint and, *inter alia*, argues that it is the representative of the detoxification unit nurses and its collective-bargaining agreement with the Respondent bars the Union from seeking representation of the detoxification unit nurses.³

¹On November 4, 1992, the Union filed an unfair labor practice charge in Case 29-CA-16973, alleging that the Respondent violated Sec. 8(a)(5) and (1) of the Act by failing to bargain. On December 2, 1992, the General Counsel issued a complaint alleging that the Respondent violated Sec. 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 22-RC-10585 (formerly Case 29-RC-7872). On March 3, 1993, the General Counsel filed a Motion for Summary Judgment. On April 29, 1993, the Board granted the General Counsel's motion. 310 NLRB No. 207 (1993) (not reported in Board volumes), *enfd.* 24 F.3d 450 (2d Cir. 1994).

²The Union withdrew its unit clarification petition Case 29-UC-428 in 1994.

³Pursuant to Sec. 102.20 of the Board's Rules and Regulations, as revised, we find that the NYSNA, which is not a respondent in

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the previous representation and unfair labor practice proceedings. Therefore, we find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation with hospital facilities in Staten Island, New York, has been engaged in the business of operating a multisite acute care hospital.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, conducting its business, purchased and received at its Staten Island facilities products, goods, and materials valued in excess of \$50,000 directly from points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held September 17, 1992, the Union was certified on October 5, 1992, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time Registered Nurses, including per diem Registered Nurses, employed by the Respondent at its 375 Seguin Avenue, Staten Island, New York facility, excluding all discharge planners, utilization review coordinators, managerial employees, guards and supervisors, as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

this case, is without standing to file an answer. Member Cohen does not pass on whether NYSNA has standing to file an answer. Assuming *arguendo* that it does, Member Cohen would reach the same result.

B. *Refusal to Bargain*

Since July 14, 1994, the Union has requested the Respondent to bargain and, since August 1, 1994, the Respondent has refused to bargain with the Union as the exclusive collective-bargaining representative of all the registered nurses in its alcohol detoxification unit and two registered nurses in its staff development department located at the Respondent's south site facility. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after August 1, 1994, to bargain with the Union as the exclusive collective-bargaining representative of the registered nurses in its alcohol detoxification unit and two registered nurses in its staff development department located at the Respondent's south site facility, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Staten Island University Hospital, Staten Island, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Federation of Nurses/UFT, American Federation of Teachers, AFL-CIO as the exclusive collective-bargaining representative of the employees in the certified unit, which includes the registered nurses in its alcohol detoxification unit and two registered nurses in its staff development department located at the Respondent's south site facility.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Federation of Nurses/UFT, American Federation of Teachers, AFL-CIO as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time Registered Nurses, including per diem Registered Nurses, employed by the Respondent at its 375 Seguire Avenue, Staten Island, New York facility, excluding all discharge planners, utilization review coordinators, managerial employees, guards and supervisors, as defined in the Act, and all other employees.

(b) Post at its facility in Staten Island, New York, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Federation of Nurses/UFT, American Federation of Teachers, AFL-CIO as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Federation of Nurses/UFT, American Federation of Teachers, AFL-CIO, and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time Registered Nurses, including per diem Registered Nurses, employed by us at our 375 Seguin Avenue, Staten Island, New York facility, excluding all discharge planners, utilization review coordinators, managerial employees, guards and supervisors, as defined in the Act, and all other employees.

STATEN ISLAND UNIVERSITY HOSPITAL